

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:05CR420
)	
v.)	
)	
DANIEL ENRIQUE SALAIS,)	ORDER
)	
Defendant.)	
)	

This matter is before the court on the defendant Daniel Enrique Salais's Motion and Amended Motion to Vacate under 28 U.S.C. § 2255, Filing Nos. 90 and 92, and Motion to Amend § 2255 Motion, Filing No. 95. Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b), (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to being a convicted felon in possession of a firearm and conspiracy to distribute methamphetamine. He was sentenced to 120 months. In his § 2255 motion, the defendant alleges that he was not in possession of a firearm. In addition, in his § 2255 motion the defendant alleges that he received ineffective assistance of counsel for failure to provide his due process rights and to communicate to him the procedures of the case to make timely and proper legal decisions. The court has some concern that the defendant's § 2255 motion is not timely. However, part of the

ineffective assertion claim is that defendant's attorney failed to notify the defendant of the Eighth Circuit ruling.

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. *See Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motions, Filing Nos. 90, 92, 95, within 21 days of the date of this order.
3. Defendant's motion to Leave to Proceed In Forma Pauperis is granted. Filing No. 93.
4. Defendant's motion to amend motion to vacate under 28 U.S.C. § 2255 is granted. Filing No. 95

DATED this 20th day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon
Chief United States District Judge